



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20518

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OCT 9 1973

B-178237

Trans Country Van Lines, Inc.  
3300 Veterans Highway  
Bohemia, L. I., New York 11716

Attention: Larry Binenfeld  
Audit Control

Gentlemen:

Reference is made to your letter of June 18, 1973, file 6773-67-T-R-21, requesting reconsideration of our decision of June 6, 1973, B-178237, 52 Comp. Gen. \_\_\_\_\_. In that decision we sustained our settlement of January 28, 1971, which disallowed your claim for \$671.94. Your claim was based on the use of Government Rate Tender I.C.C. No. 1-U to ascertain the transportation charges whereas our settlement was based on Trans Country Van Lines Tender I.C.C. No. 50. It is your contention that since the shipment was transported for the United States Coast Guard, I.C.C. No. 50 has no application because you contend that tender was offered solely to the Military Traffic Management and Terminal Service (MTMTS) or the Military Departments.

Decisions of this Office are reviewable when material error of either fact or law is alleged and identified. With the exception of your supplemental bill for the additional transportation charge of \$70.98, which presents additional facts and is apparently consistent with our decision of June 6, 1973, B-178237, it is questionable whether your request for reconsideration of that decision meets the standard described above. The theories now presented either misstate the facts, fail to disclose complete facts, or are based on the premise, rejected in our decision, that Tender I.C.C. No. 50 was not for application since it was offered solely to MTMTS. However, a further explanation of the reasons for our decision may serve to clear up any misunderstanding you may have.

You disagree that the annotation "ICC No. 50," appearing on the face of Government bill of lading (GBL) B-9138081, issued

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March 22, 1967, is "otherwise specifically provided or otherwise stated herein" within the meaning of condition 2 on the back of the GBL, so as to remove application of Government Rate Tender I.C.C. No. 1-U, which was annotated on your commercial bill of lading. Your contention that rates are not covered by condition 2 is based on the erroneous statement that condition 2 is restricted to "rules and regulations." We quoted condition 2 for you in our decision, and it specifically covers "rules and conditions." A rate, or a tender referring to a rate when annotated on a GBL is a "condition" preempting an inconsistent condition that would govern commercial shipments.

You state that the only offerees specified in Tender I.C.C. No. 50, when issued in January 1966, were MTMTS and the Military Departments. You quote the following, apparently from the second paragraph of Item 1, page 2: "When the MTMTS, or the Military Departments orders ..." Since Item 1, page 2 relates to commodity and service, it is not conclusive as to the identity of the parties to a GBL contract; however, to the extent it might be considered as a manifestation of the offeror's intentions, we point out that you have overlooked the fact that at the time this shipment moved (March 1967) the following language had been substituted for the language quoted by you: "When the shipper or shippers agent orders ..." This change from specific to general should apprise a reasonable person that the commodity and service provisions of Item 1, page 2 relate to a general class. The term "shipper" is obviously broad enough to include the Coast Guard.

The assertion that the annotation "ICC No. 50" is inaccurate or incorrect has no merit, and is based on the repetitive argument that you never offered I.C.C. No. 50 to the Coast Guard. We clearly stated in our decision that "a section 22 tender a carrier offers generally to the 'United States Government' is available to any Government agency not excluded, willing to do business with the offering carrier." We explained that item 10 of I.C.C. No. 50 constitutes a continuing offer to the United States.

A general offer made to a particular class of persons may be accepted by anyone coming within the description of the class. 17 C.J.S. Contracts § 40. We point out that in the absence of the specific exclusion of a particular agency in the tender, the language in item 10 constitutes a general offer to a particular class, which may be accepted by any agency within that class. The offer ripens into a contract, as provided in item 10, by making a shipment under its terms. 37 Comp. Gen. 753, 754, 755 (1958). The Coast Guard is an ascertained "person" within the particular class

of offerers, the "United States Government." The tender by the Coast Guard of 23,660 pounds of Electrical Instruments, NOI at Brooklyn, New York, on GBL B-9138081 and acceptance by Trans Country Van Lines for transportation to Avondale, Louisiana, ripened into a contract at the \$5.31 per 100 pounds rate provided in Tender I.C.C. No. 50.

The belated intention of your corporation to transport the shipment on Tender I.C.C. No. 1-U (or "Tariff 44") appears to be without legal foundation with respect to the circumstances involved here. The principle quoted from Kansas Flour Mills Corp. v. Abilene & Southern Ry. Co., 195 I.C.C. 277, 281 (1933), modified 198 I.C.C. 701 (1934), that the tender must be considered as a whole does not appear pertinent since that case related to a tariff that was ambiguous. We have here a tender whose provisions are unequivocal with respect to the offerers. Where the language of a tender is plain and unambiguous, and in the absence of mutual mistake, the intention manifested on the GBL is the intention to which the law gives effect. It is what the GBL and tender say, not what a party later says it should have been, that controls.

To say that a GBL contract under circumstances of mistake may be reformed and enforced according to the true intentions of the parties is not inconsistent with the rule that a GBL contract, reflecting the true intentions of the parties, is enforceable according to its unequivocal terms. These are simply incidents of the general rule that tender rates and charges on Government shipments are determined from the intentions of the parties as of the time of contracting.

As a consequence of the above cited principles, your supplemental bill for \$729.42, based on Tariff 44 is not sustainable. On the same principles, however, we are instructing our Transportation and Claims Division to make an appropriate allowance of your supplemental bill for the additional transportation charge of \$70.98 if the charges are properly applicable according to the provisions of Tender I.C.C. No. 50.

Sincerely yours,

Paul G. Dembling

For the Comptroller General  
of the United States